



POLICE DEPARTMENT

March 22, 2013

MEMORANDUM FOR: Police Commissioner

Re: Lieutenant Daniel Modell
Tax Registry No. 916247
Transit Bureau District 3
Disciplinary Case No. 2011-5704

The above-named member of the Department appeared before me on
November 20, 2012 and December 11, 2012, charged with the following:

1. Said Lieutenant Daniel Modell, while assigned to the Police Academy, on or about and between March 31, 2010 and September 6, 2011, did engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: Said Lieutenant on two occasions, request [sic] the assistance of other members of the service to prevent the processing and adjudication of two summonses issued to other individuals.

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT
GENERAL REGULATIONS

The Department was represented by Vivian Joo, Esq., Department Advocate's Office, and Respondent was represented by Marvyn Kornberg, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Detective Kai Mendez, Detective Derick Cuebas, Sergeant Robert Rios, Sergeant Bryan Brooks and Sergeant Ramon Valdez as witnesses.

Detective Kai Mendez

Mendez, who is assigned to Internal Affairs Bureau (IAB) Group 22, testified that from January 1, 2010 through December 31, 2010, she was assigned to an investigation which was conducted by IAB jointly with the Bronx District Attorney's Office (DA's office) which involved wiretaps. Although the initial wiretap order involved intercepted telephone conversations of Jose Ramos the subject of a drug case, the wiretap was later expanded to include intercepting telephone conversations of police officers who were assigned to precincts in the Bronx and who served as Patrolmen's Benevolent Association) PBA delegates regarding whether these police officers were "fixing" summonses. One of the PBA delegates whose telephone was wiretapped was Police Officer Brian McGuckin who was assigned to the 40 Precinct.

Mendez explained that the wiretapped phone conversations were recorded digitally and she described the wiretap system as a "set of computers. When a phone call comes in, the subject's phone number will pop up, and it will pick up the phone conversation." Mendez followed the minimization restrictions in the wiretap order by listening to the first two minutes of a conversation. If the conversation was pertinent to the investigation, she would continue listening. If it was not pertinent, she would have to

turn it off. Mendez said the parties would sometimes identify themselves or she would match the phone numbers to previous conversations.

Mendez testified that on March 31, 2010, she intercepted a phone conversation between McGuckin and Respondent. [Department's Exhibit (DX) 1 is the compact disc on which the conversation was recorded and DX 1A is the transcript of the conversation].

Respondent: Brian McGuckin its Danny Modell how are ya?

McGuckin: Not to bad and yourself? So how can I help ya?

Respondent: Good, good, listen am I bothering ya is this a bad time?

McGuckin: Not at all my brother, for you never a bad time.

Respondent: (laugh) Ahh Brian I was hoping ah possibly you could help me out with ah ahh a summons that my step-daughter's fiancé got.

McGuckin: Where about?

Respondent: It was in the sixth precinct earlier today.

McGuckin: Okay, let, do me one favor.

Respondent: Sure.

McGuckin: Let me call you back all right, I'mma call you back.

Respondent: Sure, sure.

McGuckin: All right, I'll call you right back.

Respondent: Alright later bye.

On cross-examination, Mendez agreed that Ramos' telephone was being wiretapped as early as 2008 because Ramos was being investigated on a drug case and that the wiretap on McGuckin's telephone was an extension of the previous wiretap order. Mendez was instructed by the DA's office to listen to the phone calls for two minutes to determine if the call pertained to summonses. Mendez did not know what a pen register was. Mendez kept a log of Respondent's incoming and outgoing phone calls and Detective Katkofsky would subsequently enter the names of the persons who called. Mendez confirmed that the wiretap records showed that the March 31, 2010 phone conversation between McGuckin and Respondent was the only instance where Respondent called McGuckin's phone number and requested that he "take care of" a

summons. She also agreed that from January 1, 2010 to March 31, 2010, Respondent did not call McGuckin's phone number.

Mendez agreed that there are proper and improper ways of preventing a summons from being processed and that police officers often request a courtesy from the officer who issued a summons for family members who had received a summons. Mendez also agreed that prior to this investigation she had been aware that other members of the service (MOS) had asked for the courtesy and that it was a common practice within the Department. Mendez was aware that about ten officers were charged criminally for attempting to fix summonses and that numerous officers had been asked to "take care of" summonses.

Detective Derick Cuebas

Cuebas, a 21-year member of the Department assigned to IAB Group 22 who was involved in the investigation described by Mendez, testified that on March 31, 2010, at 5:06 p.m., he intercepted a phone call between McGuckin and Police Officer Gregory Manning, a subject of the investigation and the Bronx Financial Secretary of the PBA. This call was followed by a text message at 5:10 p.m. from McGuckin to Manning, which read, "My friend in the 6th Precinct, P.O. Crespo." Cuebas testified that it was determined that these communications between McGuckin and Manning related to Respondent's request to McGuckin that he help him out with a summons that had been issued to his stepdaughter's fiancé.

During cross-examination, Cuebas said he could not recall if Respondent had asked for any other summonses to be "taken care of." Cuebas stated that he did not keep

logs but he kept recordings on the computer regarding the wiretap. Cuebas kept a record of who initiated the phone call based on the caller's telephone number under the heading "Direction" and "Other phone number" and that "there was a list of numbers that the wire taps of the phone numbers of the subject officers were listed" and the list would "indicate of that particular subject officer who it belonged." Cuebas confirmed that from January 1, 2010 to December 31, 2010, other than the March 31, 2010 recorded telephone conversation between Respondent and McGuckin, Respondent did not call McGuckin's phone number.

Cuebas stated that the text message from McGuckin to Manning was sent from McGuckin's phone but Cuebas did not know who the recipient of the message was. When he was asked how this text message pertained to Respondent, Cuebas responded, "They all are linked together." Cuebas explained that this text message relates to Respondent because "During the course of listening to the wire taps, as well as incoming calls, outgoing calls and text messages, they all become linked together." Cuebas said that he and his co workers in the wire room "linked" the cases together. Cuebas did not know who linked the text message from McGuckin to Manning to Respondent. Cuebas did not know about how many summonses McGuckin had "taken care of" since there were "too many" to keep track of.

Sergeant Robert Rios

Rios, an eight-year member of the Department assigned to IAB who worked on the investigation when he held the rank of detective, testified that on April 1, 2010 he intercepted a text message, which was sent by Respondent to McGuckin and a phone call

made by McGuckin to Manning during which McGuckin asked Manning if he had heard anything from the 6 Precinct. Rios explained that Respondent had called McGuckin about a summons that a family member had received in the confines of the 6 Precinct and McGuckin had called Manning, who had a contact person in the 6 Precinct, to attempt to stop the processing of the summons. During the telephone conversation, Manning informed McGuckin that Manning had not reached out to anyone in the 6 Precinct.

During cross-examination, Rios stated that over the course of the wiretap McGuckin had called the 6 Precinct PBA delegates less than 50 times about summonses. Rios did not know if the phone call in the case at bar was the only call that McGuckin made to Manning about these summons-related inquiries. He agreed that during the conversations between McGuckin and Manning, Respondent was not referred to by name and that McGuckin had called PBA delegates about 300 times to request that they "take care of" summonses. Rios agreed that the words used in the two text messages, in and of themselves, were not improper, and that this was the only instance where Respondent and McGuckin allegedly discussed "taking care of" a summons. Rios further agreed that from early 2009 up to March 31, 2010, no recorded conversation between Respondent and McGuckin took place where Respondent asked McGuckin to "take care of" a summons for him.

Rios confirmed that if a summons that has already been issued to a motorist has a wrong date, license plate, location, or any other wrong information, then it could be voided by completing a Summons Voidance Form. When an MOS receives a summons while on Department business, the MOS can contest the summons by completing a Summons Plea Form and if a legitimate reason exists for the violation, the summons

might be voided. Rios acknowledged that it need not be a violation of the Patrol Guide if a MOS asks another MOS to “take care of” a summons because a summons could be voided by completing a Summons Voidance Form.

During redirect examination, Rios explained that the April 1, 2010 text message sent by Respondent to McGuckin was improper because Respondent was a lieutenant and McGuckin was police officer and a PBA delegate. Rios explained that “taking care of” a summons means that the summons was not going to be processed.

Sergeant Bryan Brooks

Brooks, a 15 year member of the Department assigned to IAB Group 21, testified that his role in the investigation was to conduct official Department interviews of the MOS who were overheard on wiretapped phone calls. He listened to about 1,000 wiretapped phone calls and he conducted about 350 official Department interviews. Brooks testified that the investigation revealed that summonses were “taken care of” by PBA delegates. After a MOS called a PBA delegate and asked for “a favor” or “a little assistance” regarding a summons that had been issued, the PBA delegate who had been called would contact the PBA delegate at the precinct where the summons was issued.

He explained that officers would not go directly to the issuing officers because “they went to people that they knew in their command or other commands. They strictly stuck to delegates they knew.” The delegates would then “approach the issuing officer and the summonses wouldn’t be turned in or they would be taken care of in court, or they would be removed from the system as well if they were submitted.” The summons would be removed from the summons box or from a “stack being counted prior to being entered

into the computer system to be processed.” During the course of his investigation, he heard the phrase “can you take care of a summons” a handful of times. Brooks testified that a summons issued to a motorist can be legitimately voided by the issuing MOS only if the summons was issued in error or if the MOS can provide a reasonable explanation for why the summons should be voided.

On September 7, 2011, Brooks conducted an official Department interview of Respondent (DX 2 is the recording of Respondent’s Department interview. DX 2A is a transcript of the interview that was edited by Brooks and DX 2B is an unedited transcript). At his official Department interview Respondent was asked the following questions and provided the following answers:

Q: Um, just going to give you a few terms here, if you could just define them if you would as they relate to summons.

A: Okay.

Q: Police courtesy.

A: Extend some help from police officer to the other.

Q: And how—what kind of help could you extend?...

A: Perhaps asking on behalf of a family member, a friend a little courtesy to be extended. I’m not really sure how to define courtesy, how to break that down any further...

Q: How about taking care of a summons? What does that mean to you?

A: Extending a courtesy in the sense of testifying...

Q: So taking care of a summons at this point is preventing a summons from going into the system to be processed?

A: Yeah.

Q: All right, you would do that, okay. So it’s something that’s done after the summons is issued, you prevent it from going in so nobody penalized on it, monetarily or whether they get points on their license.

A: Yeah.

Q: Have you ever heard of the term taking care of it in court?

A: Um, yes.

Q: Okay, what does that mean?

A: Taking care of it in court. I mean there, I guess the officer whose issuing the summons would be there to exercise discretion and not recollect things just so.

Q: Okay. And if the issuing officer didn’t recollect specifics of the incident or any sort of detail in his testimony what would ultimately happen here?

A: Well the summons would tend to be dismissed.

Q: Okay. Now that we've defined those three terms, have you in the last year and a half, have you taken care of any summonses?

A: Have I myself?

Q: Have you personally taken care of any summonses?

A: No.

Q: All right. In the last year and a half have you requested that a summons be taken care of?

A: I'm sure that I have.

Q: Okay, any specifics, any details that could - -.

A: I mean I can't answer with great specificity. I know that I have.

Q: Who would you have asked?

A: Probably Brian McGuckin.

Q: And how many times would you say you've reached out to Brian McGuckin in the last year?

A: A couple of times I would think.

Q: A couple, meaning two?

A: I would say that.

Q: And who is Brian McGuckin?

A: Brian was a police officer in the 40 who at some point during the course of my tenure there, I think towards the end of it he became a delegate.

Q: Okay.

Q: Who were the people you requested for, on behalf of whom?

A: I mean there to, it's hard for me to be very specific about these things just because frankly it's not something I would have attached tremendous significance to. I'm inclined to say during maybe one of them it might have been my girlfriend's daughter.

Q: And what were the specifics of that one?

A: I don't know, I mean I can't...

Q: Do you remember what the summons was for?

A: It might have been a parking summons.

Q: Okay. Do you know where the parking summons was issued?

A: No.

Q: Confines of what command?

A: It might have been the 49.

Q: So you reached out to Officer McGuckin for a parking summons in the 49 precinct for your girlfriend's daughter?

A: Yes. I think so.

Q: What's her name?

A: Last name is [REDACTED] - - the first name is [REDACTED]

Q: That car would have been registered to her?

A: Yes, I think so.

Q: - -. [REDACTED] you said.

A: Mm-hmm.

Q: How Spell that [REDACTED]

A: [REDACTED], first name is [REDACTED] common spelling.

Q: Okay. So that's one, and the other one?

A: I don't remember, if you want to refresh my memory on that one.

During cross-examination, Brooks said that he was told by his superiors to conduct a Department interview with Respondent about Respondent's March 31, 2010 conversation with McGuckin. Brooks conducted approximately 350 Department interviews but did not know how many of those interviews resulted in Charges and Specifications against the subject MOS. He recalled that "many" of the 350 MOS acknowledged that they had asked for a summons to be "taken care of."

Respondent offered in evidence a Summons Voidance Form (RX A) and a Summons Plea Form (RX B). Brooks explained that a Summons Plea Form is prepared where a summons is issued to a vehicle on Department business. Brooks agreed that he did not ask Respondent, during the Department interview, the specific date that Respondent had telephoned McGuckin. Brooks agreed that he did not hear Respondent, on any of the recordings he listened to, ask McGuckin to make false or misleading statements in court about a summons.

Sergeant Ramon Valdez

Valdez, a 15-year member of the Department who is assigned to IAB Group 21 and was involved in the investigation, testified that he was responsible for monitoring the computers that intercepted the phone calls and that on April 2, 2010 he intercepted a phone call between Respondent and McGuckin which was initiated by Respondent.

The following conversation took place between Respondent and McGuckin:

McGuckin: Danny how are you?

Respondent: Brian what's up brother? Is this phone good or do you want to call me back on the other one?

McGuckin: Oh we're all right, we're all right, uh, look, look.

Respondent: Don't worry, nah, don't worry.

McGuckin: Hear me out.

Respondent: Yeah, yeah, yeah.

McGuckin: My dad passed away Tuesday.

Respondent: Oh my gotch, Brian, I'm so sorry.

McGuckin: I, I had asked to the trustee to handle it and he got back to me saying that it went out you know.

Respondent: Yeah, no problem, no problem.

McGuckin: Have him plea not guilty and I was told.

Respondent: Yeah.

McGuckin: It would be no problem.

Respondent: Okay, I was going to tell him that anyway to plea not guilty uh, uh from the tax number I'm guessing uh the kid might not be a wiz in court anyway so uh you know maybe take a chance. Anyway uh chief

McGuckin: Right.

Respondent: I wish I would've realized that I wouldn't have bothered you at all.

McGuckin: Uh, no problem no problem at all, no problem at all.

Respondent: Any, if there's anything I can do Brian please don't, don't hesitate to ask.

McGuckin: Thank you.

Respondent: Okay and uh, uh really sorry.

McGuckin: I appreciate it.

Respondent: I'm really sorry, I'm really sorry.

McGuckin: Aight my brother thanks.

Respondent: Okay, alright.

McGuckin: Alright.

Respondent: Take care bye.

On cross-examination, Valdez acknowledged that when a motorist pleads not guilty the MOS who issued the summons testifies as to why the summons was issued. Valdez agreed that in the conversations he listened to, Respondent never asked McGuckin to get other MOS to perjure themselves by testifying falsely in court. Valdez was not aware of any phone conversations prior to March 31, 2010, between Respondent and McGuckin. Valdez did not know if anyone had tried to locate the summons that was the subject of the phone conversation between Respondent and McGuckin.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent, a 17-year member of the Department, was assigned to the 40 Precinct during 2010. Respondent testified that he had a conversation with McGuckin on March 31, 2010 regarding a summons that had been issued to his stepdaughter's fiancé. Respondent explained that when he asked McGuckin to "take care of the summons," he meant that "the first thing I would want to know in a case like that is what was the interaction like between the officer and the person on behalf of whom I'm calling. Because if the person on behalf of whom I'm calling was an idiot, I don't want it to go any further than that." He continued, "So that's the first thing. Beyond that, I would have expected from" McGuckin "that if the thing could be handled in a way that was proper, I would want" McGuckin "to do that." Respondent denied that he asked McGuckin to do anything improper. Respondent stated that during their phone call he asked McGuckin if the "phone was good" as a courtesy because McGuckin "was always a little bit paranoid that people were listening-in in a number of different contexts."

Respondent made a follow-up phone call to McGuckin on April 2, 2010, because "I had my own suggestion that I was going to make to the person on behalf of whom I was calling, which was just in looking at the tax number, the police officer who issued the summons, it was a fairly high tax number." He continued, "It takes some time to develop a skill to make a prima facie case at TVB, and I was going to suggest to him that he take a chance and plead not guilty and hope that the officer hadn't developed that skill

quite yet.” Respondent testified that his stepdaughter’s fiancé pleaded guilty and paid the summons. The summons was issued for operating a vehicle without wearing a seat belt.

Respondent could not recall if he spoke to McGuckin prior to March 31, 2010 about “taking care of” a summons. He confirmed that during his official Department interview he said he “might have” spoken to McGuckin prior to March 31, 2010, because he wanted to be accurate and honest. Respondent was not confronted by investigators with any other summonses he had allegedly asked McGuckin to “take care of.”

On cross-examination, Respondent stated that he had known and occasionally socialized with McGuckin since 2006. With regard to his statement at his official Department interview that during the one-year period which preceded the interview he had reached out to McGuckin about a summons that had been issued to his girlfriend’s daughter [REDACTED] in the 49 Precinct, Respondent denied that he had contacted the PBA delegate at the 49 Precinct regarding this summons.

FINDINGS AND ANALYSIS

It is charged that “on or about and between March 31, 2010 and September 6, 2011” Respondent engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that “on two occasions” he requested the assistance of McGuckin to prevent the processing and adjudication of “two summonses” issued to other individuals.

Respondent's statute of limitations claim regarding the March 31, 2010 conversation

Although during their March 31, 2010 conversation Respondent asked McGuckin if he "could help me out with a summons that my step-daughter's fiance got," Respondent argued that any misconduct he engaged in during his March 31, 2010 conversation with McGuckin is time-barred under the applicable 18-month statute of limitations.¹ It is not disputed that the instant charge was not served on Respondent until October 11, 2011, well over 18 months after the date that the conversation took place. The Department argued that based on statements Respondent made at his official Department interview (discussed below), Respondent's March 31, 2010 call was only the first in a series of calls he made to McGuckin to try to prevent the processing or adjudication of summonses. The Department argued that by contacting McGuckin to prevent the processing and adjudication of other summonses, Respondent engaged in a continuing course of conduct that served to toll the expiration of the 18-month statute of limitations regarding their March 31, 2010 conversation. The Department's argument is not convincing. Each call Respondent made to McGuckin to prevent the processing or adjudication of a particular summons would appear to constitute a separate, distinct act. As a result, any misconduct Respondent engaged in during his March 31, 2010 telephone conversation with McGuckin is time-barred under the applicable 18-month statute of limitations.

Respondent's admissions at his official Department interview

At his official Department interview on September 7, 2011, Respondent admitted that on two occasions during the past year he had called McGuckin to request his

¹ Under Civil Service Law Section 75(4).

assistance in preventing the processing or adjudication of summonses. At this interview, when Respondent was asked, "And how many times would you say you've reached out to Brian McGuckin in the last year?" Respondent answered, "A couple of times I would think." Respondent was then asked, "A couple, meaning two?" Respondent answered, "I would say that."

It is clear that the question "And how many times would you say you've reached out to Brian McGuckin in the last year?" referenced the 12-month period between September 7, 2010 and September 7, 2011. Based on all of the questions that had been posed to him prior to this question, it is also clear that Respondent knew that by the phrase "reached out to Brian McGuckin," his interviewers were referring to Respondent calling McGuckin specifically to request his assistance in preventing the processing or the adjudication of a summons. Respondent acknowledged that he had reached out to McGuckin twice during the 12-month period prior to September 7, 2011, once regarding a summons that had been issued to his girlfriend's daughter [REDACTED] in the 49 Precinct and once regarding a summons whose details he could not recall.

Since the running of the 18-month statute of limitations was tolled when the instant charge was served on Respondent on October 11, 2011, the entire 12-month period between September 7, 2010 and September 7, 2011 falls within the 18-month statute of limitations.

I reject Respondent's claim that he never asked McGuckin to do anything improper. That Respondent was fully aware that it was improper for him to call a police officer who was assigned to another command and who was serving as the PBA delegate for that command to request his assistance in preventing the processing or adjudication of

two summonses, is reflected by the fact that during a previous call Respondent had asked McGuckin, "Is this phone good...?" Although Respondent asserted that he made this remark because it was McGuckin who "was always a little bit paranoid that people were listening-in" on his phone conversations, I find that Respondent's comment expressing concern as to whether the phone line was safe to talk on reflects his consciousness that his call was improper.

Respondent is found Guilty.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on June 30, 1995. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

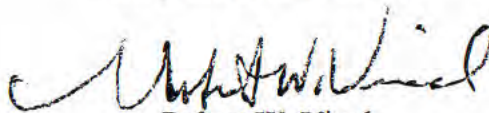
The Assistant Department Advocate recommended that Respondent be suspended for five days and also that he forfeit 25 vacation days, for a total loss of 30 days, and that he serve one year on dismissal probation.

In determining a penalty recommendation, I have taken into consideration the penalties imposed in previous cases where MOS have engaged in conduct prejudicial to the good order, efficiency or discipline of the Department by requesting the assistance of a PBA delegate to prevent the processing or the adjudication of summonses. I have also taken into consideration Respondent's excellent performance evaluations, his Department

Recognition Summary, and the fact that he has no prior disciplinary record in over 17 years of service.

It is recommended that Respondent be DISMISSED from the New York City Police Department; however, this penalty of dismissal will be held in abeyance pursuant to Section 14-115(d) of the NYC Administrative Code for a period of one year, during which time Respondent will remain on the force at the Police Commissioner's discretion and may be terminated at any time without a further hearing. It is further recommended that Respondent be suspended for five days and that he forfeit 25 vacation days for a total forfeiture of 30 days.

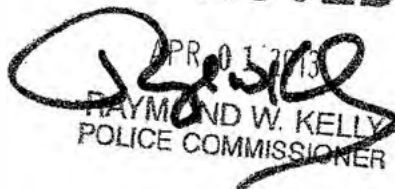
Respectfully submitted,



Robert W. Vinal

Assistant Deputy Commissioner Trials

APPROVED



APR 01 2013
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

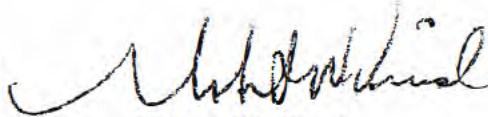
From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
LIEUTENANT DANIEL MODELL
TAX REGISTRY NO. 916247
DISCIPLINARY CASE NO. 2011-5704

Respondent received an overall rating of 4.5 on his 2011 annual performance evaluation, 4.5 on his 2010 evaluation, and 4.5 on his 2009 evaluation. He has been awarded one Commendation, three Meritorious Police Duty medals and 13 Excellent Police Duty medals. [REDACTED] He has no monitoring records. He has no prior disciplinary record.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner Trials